

January 21, 1999



OFFICE OF THE  
ATTORNEY GENERAL  
STATE OF TEXAS

OR99-0150

Mr. Matthew Boyle  
Boyle & Lowry, L.L.P.  
4210 Wincen, Suite 108  
Irving, Texas 75062-2763

Dear Mr. Boyle:

— \* —  
JOHN CORNYN  
Attorney General  
— \* —

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 121332.

P.O. Box 12548  
Austin, Texas  
78711-2548  
(512) 463-2100  
[www.oag.state.tx.us](http://www.oag.state.tx.us)

The City of Bedford (the "city") received a request for all "records pertaining to disciplinary actions for police personnel for the past five (5) years." You indicate that you will release much of the requested information. You claim, however, that three categories of information, which you have submitted as Folders A - C, may be withheld under sections 552.101, 552.102, 552.108 and 552.117 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

\* \* \*

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108, .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You explain that each of the cases has been fully adjudicated. You state that the information submitted as Folder A relates to criminal investigations "that did not result in a conviction or deferred adjudication." Our review of the information shows that most of the material in Folder A may be withheld under section 551.108(a)(2). We note, however, that information normally found on the front page of an offense report is generally considered public. *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Gov't Code § 552.108(c); *see* Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*).

We do not believe, however, that all of the records in Folder A may be withheld under section 552.108. We do not believe that the exception applies to some of the documents, revealing information pertaining to the personnel matters of individual officers. Such information only indirectly "deals with the detection, investigation, or prosecution of crime" and more directly deals with the personnel matters of the city. *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. Civ. App.--El Paso 1992, writ denied) (where no criminal investigation or prosecution results from investigation of police officer for alleged misconduct, section 552.108 is inapplicable); Open Records Decision No. 350 (1982); Open Records Letter

No. 96-1329 (1996). Therefore, the city may not withhold this information under section 552.108 of the Government Code. We have marked the information in Folder A that must be released.

You next claim that material within Folder B is excepted from disclosure by sections 552.101 and 552.102. Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the act. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by common-law privacy and excepts from disclosure private facts about an individual. *Id.* Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

You have not submitted any documents within Folder B that are adequate summaries of the harassment investigations. Consequently, based on *Ellen*, the city must withhold only the identities of the alleged victims and the individual witnesses in the submitted documents where sexual harassment is discussed. The remaining information in the documents must be released. See Open Records Decision No. 470 (1987) (a public employee's job performance does not generally constitute his private affairs). Additionally, we have marked two pages in Folder B that do not appear to relate to a sexual harassment investigation. These documents

may not be withheld under section 552.101. Except for the identifying information discussed above, the information in Folder B must be released. *Id.*

Finally, you argue that portions of the information in Folder C concerning peace officers must be withheld based on section 552.117 of the Government Code. Section 552.117 of the Government Code provides that information may be withheld if it is:

information that relates to the home address, home telephone number, social security number, or that reveals whether the following person has family members:

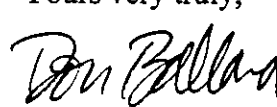
\* \* \*

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code.

You must, therefore, withhold the peace officers' home addresses, home telephone numbers, social security numbers, and information revealing whether they have family members. Open Records Decision Nos. 532 (1989), 530 (1989).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB\nc

Ref: ID# 121332

Enclosures: Marked documents

bcc: Ms. Kristen Brown  
8065 Summer Sun Drive  
Fort Worth, Texas 76137-6033  
(w/o enclosures)